



# The Attorney General of Texas

December 7, 1977

JOHN L. HILL  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711  
2/475-2501

11 Commerce, Suite 200  
Dallas, TX. 75202  
4/742-8944

14 Alberta Ave., Suite 160  
Paso, TX. 79905  
5/533-3484

3 Main, Suite 610  
Houston, TX. 77002  
3/228-0701

6 Broadway, Suite 312  
Houston, TX. 79401  
6/747-5238

13 N. Tenth, Suite F  
Allen, TX. 78501  
2/682-4547

300 Main Plaza, Suite 400  
San Antonio, TX. 78205  
2/225-4191

Equal Opportunity  
Affirmative Action Employer

Hon. Kenneth H. Ashworth  
Commissioner  
Coordinating Board  
Texas College and University  
System  
P. O. Box 12788 Capitol Station  
Austin, Texas 78711

Letter Advisory No. 149

Re: Whether an individual may serve as member of city council and trustee of Southwest Texas Joint County Junior College.

Dear Mr. Ashworth:

You request our opinion on the following question:

May the same person legally hold the offices of member of the City Council of Camp Wood, Real County, Texas, and Trustee of Southwest Texas Joint County Junior College?

The City of Camp Wood is within the territorial jurisdiction of the Southwest Texas Joint County Junior College District, which is comprised of Real, Uvalde and Zavala Counties. The only campus of the college is located in Uvalde, and none of the off-campus activities of the college are conducted within the City of Camp Wood. Trustees of the Junior College District receive no remuneration or emolument of office. Education Code § 130.082(d). We are advised that members of the city council of Camp Wood receive no pay.

The constitutional prohibition against the holding of more than one civil office of emolument is not applicable, since neither office is one of emolument. Tex. Const. art. 16, § 40.

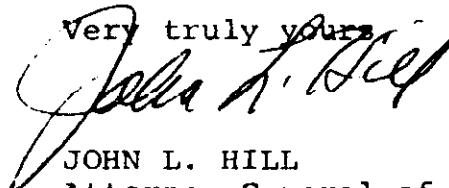
A possible impediment to dual office holding is incompatibility. A common law rule prohibits a person from holding incompatible offices, regardless of whether they are offices of emolument. See Thomas v. Abernathy County Line Independent School Dist., 290 S.W. 152 (Tex. Comm'n

App. 1927, holding approved); Attorney General Letters Advisory Nos. 114 (1975); 86 (1974); 64, 62, 54 (1973); 47 Tex. Jur.2d, Public Officers § 28 at 42-43.

The Thomas case held that the offices of Trustee of the Independent School District and Alderman of the city involved were incompatible because the city had various directory or supervisory powers over school property located within the city in respect to which conflicts of discretion or duty might arise in regard to health, quarantine, sanitary, and fire prevention regulations. See Attorney General Opinion V-883 (1949). That potential for conflict does not exist here because the Junior College District has no property or activity within the jurisdiction of the city. The situation here is more like that in the case of State ex rel. Brennan v. Martin, 51 S.W.2d 815 (Tex. Civ. App. -- San Antonio 1932, no writ). This case involved the offices of city tax assessor and school district trustee. The court found the two offices to be wholly unrelated, in no manner inconsistent, and never in conflict. The court said that neither officer is accountable to the other, nor under his dominion, nor subordinate to the other, nor has any power or right to interfere with the other in the performance of any duty, and thus not inconsistent or incompatible. Id. at 817. Where none of the Junior College District's property or activities are within the territorial jurisdiction of the city and there is no relationship between the city and the college, we do not believe that the offices of trustee and council member are incompatible. See Attorney General Opinion V-242 (1947) (city attorney may serve as trustee of independent school district not municipally controlled).

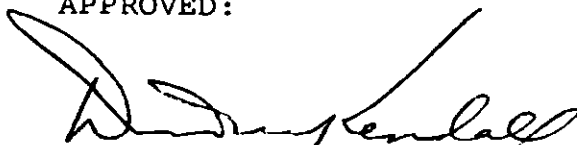
Absent facts or circumstances which would establish some potential conflict in the performance of the duties of both offices, and no fact has been suggested here, we believe that a person may serve both as a member of the City Council of Camp Wood and as a trustee of the Southwest Texas Joint County Junior College.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant

A handwritten signature in cursive script, appearing to read "C. Robert Heath", is written over a horizontal line.

C. ROBERT HEATH, Chairman  
Opinion Committee

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